

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CYTOLOGIX CORPORATION,

Plaintiff,

v.

VENTANA MEDICAL SYSTEMS, Inc.,

Defendant.

Civil Action No. 04-11783 (RWZ)

PLAINTIFF'S RESPONSES TO DEFENDANT'S FIRST SET OF INTERROGATORIES

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, the plaintiff, CytoLogix Corporation (“CytoLogix”), hereby responds to defendant’s, Ventana Medical Systems, Inc. (“Ventana”), First Set of Interrogatories as follows:

GENERAL OBJECTIONS

CytoLogix objects to these interrogatories to the extent that they impose requirements that are inconsistent with or exceed those specified by the Federal Rules of Civil Procedure and applicable Local Rules.

CytoLogix objects to these interrogatories to the extent that they call for documents or information that are subject to the attorney-client privilege, attorney work product protection, or are otherwise immune from discovery.

CytoLogix objects to these interrogatories to the extent that they call for information which CytoLogix is under an obligation to third parties not to disclose.

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INTERROGATORIES

INTERROGATORY NO. 1:

STATE THE BASIS for the assertion in paragraph 8 of the Complaint that: "Ventana has infringed one or more claims of the '261 patent," including without limitation an identification of all claims alleged to be infringed and an identification of all allegedly infringing products/processes.

RESPONSE:

CytoLogix incorporates its General Objections and its Objections to Definitions and Instructions, listed above. Subject to and without waiving any of these objections, CytoLogix responds as follows.

As presently advised, the BenchMark XT and LT¹ instruments infringe claims 1 and 2 of the '261 patent. CytoLogix's infringement contentions are based on documents with the following Bates numbers: VM 10-13, VM 39-40, VM 45, VM 218, VM 248-49, VM 254, VM 268, VM 303, VM 444, VM 446, VM 448, VM 453-54, VM 465, VM 475, and CY 1-2.

INTERROGATORY NO. 2:

Separately with respect to each claim of the PATENT IN SUIT that CYTOLOGIX alleges is infringed by VENTANA, on an element-by-element basis as to each allegedly infringing product/process: (a) state whether the element is met literally or under the doctrine of equivalents; (b) explain fully and completely how the element is met; (c) IDENTIFY all DOCUMENTS and other evidence that supports or tends to support the allegation that the

¹ CytoLogix asserts that both the Benchmark XT and LT infringe claims 1 and 2 of the '261 patent based on Ventana's representation that the two instruments perform the same function.

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